

WC 07-32

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FEB 06 2007

February 7, 2007

Marlene H. Dortch, Secretary  
Wireline Competition Bureau – CPD – 214 Appls  
Federal Communications Commission  
PO Box 358145  
Pittsburgh PA 15251-5145

RE: Application of Acceris Management and Acquisition, LLC and Cognigen Networks, Inc. for a Transfer of Assets Involving Authorized Domestic Carriers

Dear Ms. Dortch:

On behalf of Acceris Management and Acquisition, LLC ("Acceris") and Cognigen Networks, Inc. ("Cognigen" and together with Acceris, "Applicants"), enclosed please find an original and seven (7) copies of the above-referenced Application.

Also enclosed are a completed Fee Remittance Form 159 and a check in the amount of \$965.00 to cover the requisite filing fee.

Pursuant to Rule 47 CFR § 63.04(b), Applicants submit this filing as a domestic Section 214 transfer of control application.

Please date stamp the extra copy and return same in the postage-paid envelope attached thereto. If you have questions or concerns with respect to the Application, please contact me at 269-381-8844.

Very truly yours,

EARLY, LENNON, CROCKER & BARTOSIEWICZ, P.L.C.

Patrick D. Crocker

PDC/pas

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Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554

In the Matter of	)	
	)	
ACCERIS MANAGEMENT AND ACQUISITION, LLC	)	
Assignee,	)	
	)	
COGNIGEN NETWORKS, INC.	)	WC Docket No. _____
Assignor,	)	
	)	
	)	
Application for Consent to Assign Certain	)	
Assets of a Company Holding	)	
Domestic Authorization Pursuant to	)	
Section 214 of the Communications Act of	)	
1934, as Amended	)	

**APPLICATION**

Acceris Management and Acquisition, LLC ("Acceris") and Cognigen Networks, Inc. ("Cognigen" and together with Acceris, the "Applicants"), by their attorneys, Early, Lennon, Crocker & Bartosiewicz, P.L.C., hereby request authority pursuant to Section 214 of the Communications Act of 1934, as amended, 47 U.S.C. §214 (the "Act"), and Sections 63.03 of the Commission's Rules, 47 CFR §§ 63.04, to assign certain assets of Cognigen to Acceris.

Pursuant to the terms of an Asset Purchase Agreement ("Agreement") executed on or about October 13, 2006, Acceris will acquire certain assets of Cognigen relating to existing residential and business customers of any type or kind that constitute the Business originating in the top 34 states by revenue as set forth in the Agreement. Accordingly, the Applicants request that the Commission approve the transfer of these assets, including the telecommunications customer base of Cognigen ("Customers") and contractual and other rights with respect to customer accounts to Acceris. The assets being transferred do not include any Section 214

authorizations. The Applicants note that Acceris already holds authority under Section 214 of the Act to provide domestic international telecommunications services.<sup>1</sup>

The proposed transaction is not expected to result in any loss or impairment of service to the Customers. Customers will continue to receive their existing services at the same rates, terms, and conditions that they have prior to the transfer and any future changes in the rates, terms, and conditions of service will be made consistent with Commission requirements. The only material change will be in the Customers' service provider. Notice of the change will be provided to Customers in accordance with Section 64.1120 of the Commission's Rules.

Pursuant to Section 63.04(b) of the Commission's Rules, 47 CFR § 63.04(b), the Applicant's are filing a combined application for the proposed transfer of assets. The Applicants provide below the information required by Section 63.24(e)(2) of the Commission's Rules 47 CFR § 63.24(e)(2). **Exhibit A** provides the additional information requested by Section 63.04(a)(6) through (a)(12) of the Commission's Rules, 47 CFR § 63.04(a)(6)-(12).

The Applicant's respectfully request streamlined treatment of this Application pursuant to Sections 63.03 and 63.12 of the Commission's Rules, 47 CFR §§ 63.03 and 63.12. This Application is eligible for streamlined processing pursuant to Section 63.03(b)(2)(i) of the Commission's Rules, 47 CFR § 63.03(b)(2)(i), because (1) after the proposed transaction, Acceris (including affiliates) will have a market share in the interstate, interexchange market of substantially less than 10 percent, and will provide competitive services exclusively in areas served by a dominant local carrier not a party to the transaction; and (2) Acceris and Cognigen (including affiliates) are not currently dominant with respect to any domestic service, and will not become dominant with respect to any domestic service after consummation of the proposed transaction. The Application also qualifies for streamlined treatment under Section 63.12 because (1) Acceris is not affiliated with a dominant foreign carrier; (2) Acceris will not become

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<sup>1</sup> Acceris received its international Section 214 authority in File Number ITC-ASG-20050701-00260, granted August 5, 2005 (DA # 05-2271). Acceris holds blanket authority to provide domestic interstate service pursuant to Section 63.01 of the Commission's Rules.

affiliated with any foreign carrier as a result of the proposed transaction; and (3) none of the other provisions contained in Section 63.12(c) of the Commission's Rules, 47 CFR § 63.12, apply.

The Applicants provide the following in support of this request:

**I. APPLICANTS**

**A. Acceris Management and Acquisition, LLC (FRN: 0013650817)**

Acceris, a limited liability company organized under the laws of the State of Minnesota, also conducts business under the trade names Acceris Communications or WorldxChange and is headquartered at:

9530 Padgett Street, Suite 101  
San Diego, CA 92126  
Telephone: (858) 547-5700

Acceris is a wholly-owned subsidiary of North Central Equity LLC ("North Central"), a privately-held Minnesota holding company established in 2004, whose executives have many years of experience in the telecommunications industry. The following entity holds a 10 percent or greater equity interest in North Central. No other entity holds a 10 percent or greater equity interest in North Central under the Commission's attribution rules.

Mr. Elam Baer, Sole Member of the Board of Governors  
North Central Equity LLC  
60 South Sixth Street  
Minneapolis, MN 55402  
Citizenship: U.S.  
Principal business: Investment  
Percent equity: 54.6% (Mr. Baer and certain units held by his spouse)

Acceris is a broad based communications company, serving residential, small and medium-sized business, and large enterprise customers throughout the United States. Acceris has one affiliate, New Access Communications LLC, which commenced service in 2000, is headquartered in Minneapolis, Minnesota, and offers domestic local telecommunications primarily in the Qwest territories and long distance resale services in Qwest territories and several other states.

Currently, Acceris is authorized to provide intrastate, interexchange service in the contiguous 48 states, Hawaii and the District of Columbia, with local exchange authority in Florida, Massachusetts, New Jersey, New York, and Pennsylvania. Acceris also is authorized by the Commission to provide domestic interstate and international telecommunications services as indicated previously in this Application.

B. Cognigen Networks, Inc. (FRN: 0003735347)

Cognigen, a publicly-traded corporation organized under the laws of the State of Colorado, also conducts business under the name Intandem Communications Corp. and is headquartered at:

6405 218<sup>th</sup> Street SW, Suite 305  
Mountlake Terrace, WA 98043  
Telephone: (425) 329-2300

The following entities hold a 10 percent or greater beneficial ownership in Cognigen. No other entity holds a 10 percent or greater equity interest in Cognigen under the Commission's attribution rules.

Anderson Family Trust  
2608 Second Avenue, Suite 108  
Seattle, WA 98120  
Citizenship: U.S.  
% of Ownership: 11.5%  
Principal Business: Private Trust

Kevin E. Anderson  
President  
K.E. Anderson Consulting, Inc.  
2608 Second Avenue, Suite 108  
Seattle, WA 98120  
Citizenship: U.S.  
% of Ownership: 11.5%  
Principal Business: Consultant for Telecommunications Industry

Peter Tilyou  
Telecommunications Consultant and Managing Director  
2608 Second Avenue, Suite 555  
Seattle, WA 98121  
Citizenship: U.S.  
% of Ownership: 11.5%  
Principal Business: Consultant for Telecommunications Industry

Currently Cognigen has authority to provide intrastate, interexchange service in 46 states (excludes Alaska, Delaware, Louisiana, and Tennessee) and the District of Columbia.

Pursuant to the Agreement, the assets being acquired by Acceris are only those relating to the Customers. After the closing, Cognigen will retain its FCC 214 authorizations<sup>2</sup> as well as its state telecommunications authorizations in order to continue to provide telecommunications services apart from the business being acquired by Acceris.

## **II. DESCRIPTION OF TRANSACTION**

Pursuant to an Asset Purchase Agreement ("Agreement") executed on or about October 13, 2006, Cognigen agrees to sell, convey, assign and transfer to the Buyer, and Acceris agrees to purchase and accept from the Seller, the "Sale Assets" summarized as follows: (1) all of the existing residential and business customers of any type or kind that constitute the business originating in the top 34 states by revenue as set forth in the Agreement, and all contractual or other rights of the Seller with respect to such customer accounts; (2) all the names, addresses, and other pertinent information for all of the Seller's customer lists, if any; customer agreements, customer billing and collection data and the complete customer billing history of each customer account with the Seller's or any predecessor entities; and (3) all cash and cash equivalents, proceeds of every nature, attributable to the Sold Customers accrued, due or collected after the applicable Closing Date.

After the Closing, Acceris will provide telecommunications services to the Customers pursuant to its own telecommunications authorizations. After consummation of the transactions, Cognigen will retain its telecommunications authorizations in order to continue to provide telecommunications services apart from the business being acquired by Acceris. **Thus, Cognigen does not seek to surrender its authorization at this time.**

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<sup>2</sup> Cognigen received its international Section 214 authority in File Number ITC-214-20040213-00073, granted March 26, 2004 (DA # 04-925). Cognigen holds blanket authority to provide domestic interstate service pursuant to Section 63.01 of the Commission's Rules.

The proposed transfer of customers to Acceris will have no adverse impact on the Customers. Customers will continue to receive their existing services at the same rates, terms, and conditions that they have prior to the transfer and any future changes in the rates, terms, and conditions of service will be made consistent with Commission regulations. To avoid Customer confusion and ensure a seamless transition, the Applicants will provide advance written notice to the affected Customers at least thirty (30) days prior to the transfer, explaining the change in service provider in accordance with applicable Commission and state regulations for changing a customer's presubscribed carrier. Acceris will file the required notice with the Commission in CC Docket No. 00-257 pursuant to Section 64.1120 of the Commission's Rules, 47 C.F.R. § 64.1120, to comply with the Commission's slamming requirements.

### **III. PUBLIC INTEREST STATEMENT**

The transaction contemplated by the Agreement will serve the public interest. Acceris is a strong company that will continue to provide high quality services to the Customers. The purchase of Cognigen's assets will strengthen Acceris, enable it to expand and better ensure that it remains a viable long-term competitor in the telecommunications market.

At the same time, the proposed transfer of assets does not present any anticompetitive issues. The Applicants emphasize that, following the transfer the Customers will continue to receive services from an experienced and qualified carrier, which services will be consistent with the quality of services currently provided by Cognigen. Cognigen primarily resells long distance services to business and residential customers and Acceris has extensive experience in providing these services. The Applicants anticipate that Customers will experience a seamless transition of service provider. Further, these Customers will be sufficiently notified of the transaction and their rights. The contact for Customers and Commission inquiries will be:

Drew Backstrand  
Acceris Management and Acquisition LLC  
60 South Sixth Street, Suite 2535  
Minneapolis, MN 55402  
(612) 465-0260

The proposed transfer does not present any competitive issues. The Applicants note that there are a number of other carriers operating in each market, including the incumbent carrier, which controls a substantial market share.

In sum, grant of the Application will serve the public interest by strengthening the competitive position of Acceris without negatively impacting either the Customers or competition in the markets in which the Applicants operate.

#### **IV. INFORMATION REQUIRED BY § 63.24(e) OF THE COMMISSION'S RULES**

Applicants submit the following information pursuant to Section 63.24(e) of the Commission's Rules, including the information requested in Section 63.18:

- (a) Name, address, and telephone number of Applicants:

Acceris Management and Acquisition, LLC (Assignee)  
(also doing business under the trade names:  
Acceris Communications or WorldxChange)  
9530 Padgett Street, Suite 101  
San Diego, CA 92126  
Telephone: (858) 547-5700

Cognigen Networks, Inc. (Assignor)  
(also doing business under the name Intandem Communications Corp.)  
6405 218<sup>th</sup> Street SW, Suite 305  
Mountlake Terrace, WA 98043  
Telephone: (425) 329-2300

- (b) Acceris is a limited liability company organized under the laws of Minnesota.

Cognigen is a publicly-traded corporation organized under the laws of Colorado.

- (c) Correspondence concerning this Application should be sent to:

Patrick D. Crocker  
Early, Lennon, Crocker & Bartosiewicz, P.L.C.  
900 Comerica Building  
Kalamazoo, MI 49007  
Telephone: (269) 381-8844  
Facsimile: (269) 381-8822  
Email: [pcrocker@earlylennon.com](mailto:pcrocker@earlylennon.com)



(d) Acceris has authority to provide international services on a facilities-based and resale basis as transferred to Acceris in File Number ITC-ASG-20050701-00260.

(h) As indicated in Section I.A. of the Application, Acceris is a wholly-owned subsidiary of North Central. The following entity holds a 10 percent or greater equity interest in North Central. No other entity holds a 10 percent or greater equity interest in North Central under the Commission's attribution rules.

Mr. Elam Baer, Sole Member of the Board of Governors  
North Central Equity LLC  
60 South Sixth Street  
Minneapolis, MN 55402  
Citizenship: U.S.  
Principal business: Investment  
Percent equity: 54.6% (Mr. Baer and certain units held by his spouse)

Acceris states that following the consummation of the transaction, no officer or director of Acceris will also be an officer or director of any foreign carrier.

(i) As evidenced by the signatures to this Application, Acceris certifies that (1) Acceris is not a foreign carrier and is not affiliated with a foreign carrier, and (2) Acceris will not become a foreign carrier or become affiliated with a foreign carrier post-close.

(j) As evidenced by the signatures to this Application, Acceris certifies that, through its acquisition of the assets of Cognigen, it does not seek to provide international telecommunications services to any destination country where (1) Acceris is a foreign carrier; (2) Acceris controls a foreign carrier; (3) any entity owns more than 25 percent of Acceris, controls Acceris, or controls a foreign carrier; and (4) two or more foreign carriers (or Applicants that control foreign carriers) own, in the aggregate, more than 25 percent of Acceris and are parties to, or the beneficiaries of, a contractual relation affecting the provision or marketing of international basic telecommunications services in the United States.

(k) Not applicable.

(l) Not applicable.

(m) Not applicable.

(n) As evidenced by the signatures to this Application, Acceris certifies that it has not agreed to accept special concessions directly or indirectly from any foreign carrier with respect to any U.S. international route where the foreign carrier possesses market power on the foreign end of the route, and that Acceris will not enter into such agreements in the future.

(o) As evidenced by the signatures to this Application, Acceris certifies that, pursuant to Sections 1.2001 through 1.2003 of the Commission's Rules, they are not subject to denial of Federal benefits pursuant to Section 5301 of the Anti-Drug Abuse Act of 1988.

(p) Applicants request streamlined processing of this Application pursuant to Section 63.12 of the Commission's Rules 47 C.F.R. § 63.12. This Application qualifies for streamlined treatment under Section 63.12(c) of the Commission's Rules, because (1) Acceris is not affiliated with a dominant foreign carrier; (2) Acceris will not become affiliated with any foreign carrier as a result of the proposed transaction; and (3) none of the other scenarios outlined in Section 63.12(c) of the Commission's Rules 47 C.F.R. § 63.12 apply.

#### **V. INFORMATION REQUIRED BY § 63.04(b) OF THE COMMISSION'S RULES**

In accordance with the requirements of Section 63.04(b) of the Commission's Rules, the additional information required for the domestic Section 214 transfer of control application is provided in Exhibit A.

**VI. CONCLUSION**

Based on the foregoing, Applicants respectfully submit that the public interest, convenience, and necessity would be furthered by grant of this Application.

Respectfully submitted,

Acceris Management and Acquisition, LLC

BY: SEE ATTACHED Jessica Newman, CEO

Cognigen Networks, Inc.

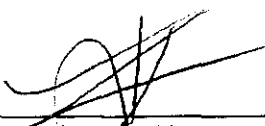
BY: SEE ATTACHED Gary L. Cook, Acting CEO

## VERIFICATION

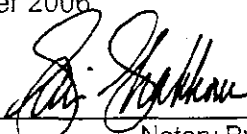
I, Jessica Newman, am the President and Chief Executive Officer of Acceris Management and Acquisition, LLC and am authorized to make this verification on its behalf. I do hereby verify that I have read the foregoing Application and the statements made therein are true, correct, and complete to the best of my knowledge, information, and belief.

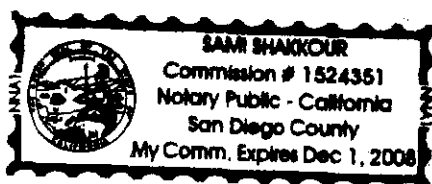
Executed on the 25 day of October 2006.

Acceris Management and Acquisition, LLC

  
\_\_\_\_\_  
Jessica Newman

Subscribed and sworn before me this 25<sup>th</sup> day of October 2006.

  
\_\_\_\_\_  
Notary Public



## VERIFICATION


I, Gary L. Cook, am the Acting CEO of Cognigen Networks, Inc., and am authorized to make this verification on its behalf. I do hereby verify that I have read the foregoing Application and the statements made therein are true, correct, and complete to the best of my knowledge, information, and belief.

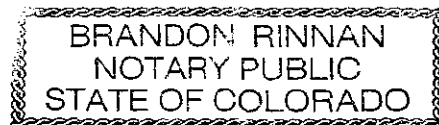
Executed on the 25<sup>th</sup> day of October 2006.

Cognigen Networks, Inc.

  
\_\_\_\_\_  
Gary L. Cook

Subscribed and sworn before me this 25<sup>th</sup> day of October 2006.

  
\_\_\_\_\_  
Notary Public



MY COMMISSION EXPIRES 4/13/2010

## **EXHIBIT A**

### **Domestic Section 214 Transfer of Control Information**

In accordance with the requirements of Section 63.04(b) of the Commission's Rules, 47 C.F.R. § 63.04, regarding the information described in paragraphs (a)(6)-(a)(12) of Section 63.04, Applicants provide the following information in support of their request.

**63.04(a)(6): Description of the Transaction**

The proposed transaction is described in Section II of the Application.

**63.04(a)(7): Description of Geographic Service Area and Services in Each Area**

A description of the geographic service areas and services provided in each area is provided in Section I of the Application.

**63.04(a)(8): Presumption of Non-Dominance and Qualification for Streamlining**

This Application is eligible for streamlined processing pursuant to Section 63.03(b)(2)(i) of the Commission's Rules, 47 C.F.R. § 63.03(b)(2)(i). Following the consummation of the proposed transaction, Acceris (including its affiliates) will have a market share in the interstate, interexchange market of substantially less than 10 percent, and will provide competitive telephone exchange services or exchange access services exclusively in geographic areas served by a dominant local exchange carrier that is not party to the transaction. Finally, neither Acceris nor Cognigen, nor any affiliate of either company, is dominant with respect to any service it provides.

**63.04(a)(9): Other Commission Applications Related to the Proposed Transaction**

None.

**63.04(a)(10): Special Considerations**

None.

**63.04(a)(11): Separately Filed Waiver Requests**

None.

**63.04(a)(12): Public Interest Statement**

The proposed transaction is in the public interest for the reasons detailed in Section III of the Application.